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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 697

WILLIAM R. EDDLEMAN, *Petitioner*,

v.

SUPREME COURT OF WASHINGTON, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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November 16, 1964

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

William R. Eddleman prays that a writ of certiorari issue to review an order of the Supreme Court of the State of Washington, entered on February 13, 1964, disbarring him and striking his name from the roll of attorneys entitled to practice law in the State of Washington.

OPINION BELOW

The opinion of the Supreme Court of Washington, reported at 63 Wash. (2d) 777 and 389 P.(2d) 296, is set forth as Appendix A hereto. Its order denying rehearing, entered June 19, 1964, is set forth as Appendix B hereto.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1257(3) of the Judicial Code of the United States. This petition is timely filed, Mr. Justice Harlan having granted an extension of time within which to file it to November 16, 1964 by order entered September 17, 1964.

QUESTIONS PRESENTED

1. Does the "due process clause" of the Fourteenth Amendment to the Constitution of the United States permit a state to enter an order disbarring a lawyer from the practice of his profession on the basis of proceedings to that end instituted 11 years after the transaction that was the genesis of the proceedings took place?

2. Does a state violate the "due process clause" of the Fourteenth Amendment to the Constitution of the United States when it denies an application for rehearing of an order disbarring a lawyer from the practice of his profession, which application for rehearing seeks to adduce evidence respecting the events upon which the order of disbarment is based that, through no fault of the applicant, did not become available until after the record upon which the order was based was closed?

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of Amendment XIV to the United States Constitution reads as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any per-

son of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In June of 1951 Petitioner was engaged in the practice of law in Seattle, Washington under the firm name of Eddleman & Wheeler, the latter then deceased. He was consulted by one Anton R. Johansen, the owner of a Douglas airplane, variously called a C-47 or a DC-3. Johansen was heavily indebted to various creditors and the airplane was in imminent danger of being sold in satisfaction of the debts. To complicate the problem, the airplane had been lying idle for 22 months and major repairs were needed to render it flyable. Petitioner undertook to arrange to borrow a maximum of $24,000 and to endeavor to settle Johansen's debts in that amount. He thereupon departed Seattle for a period of several weeks, leaving John Sweet, a lawyer in his employ, to conduct negotiations with Johansen's creditors and make appropriate arrangements. Upon Petitioner's return to Seattle he found that Sweet had committed him to Johansen's creditors in a total amount of some $26,000 and that title to the airplane had been transferred to him.

The foregoing was the genesis of the events taking place over the next several years upon which the Supreme Court of Washington grounded its order of disbarment. The only relevant subsequent events clearly established are as follows: Petitioner settled all of Johansen's known debts, expended some $7,000 to repair the airplane, transferred title to it to Kern, Inc., a corporation in which he owned all of the stock, and caused it to be leased to different lessees. In June

of 1952 Petitioner was served with a writ of garnishment in a suit instituted by another creditor of Johansen commanding him to state, *inter alia,* whether he had in his possession any property belonging to Johansen. Petitioner answered that he did not, both in writing and in testimony. In January of 1953 Johansen demanded the return of the airplane, and employed a lawyer, one Robert Beresford, to press his demand. Protracted negotiations were completed in November of 1954, as a result of which Johansen paid Petitioner $9,000, took title to all of the stock of Kern, Inc. and executed a release of all claims against Petitioner. Johansen thus secured the return of the airplane free and clear of all liens, in sound operating condition and worth some $65,000.

Nevertheless, in November of 1957 Johansen brought suit against Petitioner for an accounting, alleging that Petitioner had realized profits from the operation of the airplane that he had not disclosed in the negotiations that culminated in the return of the airplane to Johansen three years earlier. The Superior Court of King County, Washington entered judgment for Petitioner on the merits in this suit, which judgment was affirmed by the Supreme Court of Washington in *Johansen* v. *Eddleman,* 54 Wash. 2d 871, 343 P. 2d 737 (1959). Upon the filing of suit against him by Johansen Petitioner brought suit against Beresford alleging that he had falsely represented that he had authority to settle all of Johansen's claims. This suit was dismissed in January of 1958 after Beresford gave Petitioner a copy of the release executed by Johansen in 1954, with costs against Beresford.

Two years later, in March of 1960 one Fred Paul who had represented Johansen in his suit for accounting

after Beresford had advised against instituting it, complained of Petitioner to the Washington State Bar. More than a year thereafter, in June of 1961, Petitioner was advised that a formal complaint had been issued. After hearings upon the formal complaint held in 1962, the hearing panel made the following findings of misconduct on the part of petitioner: (1) that petitioner had taken title to Johansen's airplane in June of 1951 for the purpose of deceiving Johansen's creditors and the public, for which it recommended a reprimand; (2) that Petitioner had untruthfully stated in his written and oral responses to the writ of garnishment that he had no property in his possession belonging to Johansen, for which it recommended suspension from practice for three years; (3) that Petitioner's suit against Beresford was dishonorably motivated, for which it recommended suspension from practice for three years; (4) that Petitioner was improperly using the firm name of Eddleman & Wheeler, for which it recommended a reprimand.

Upon review of the record the Board of Governors of the Washington State Bar affirmed the panel's findings but reduced the recommended periods of suspension from the practice of the law from three years to one year. The Supreme Court of Washington also affirmed the panel's findings, but increased the penalty to permanent disbarment, three of the nine judges dissenting on the ground that the Court should not have imposed a penalty harsher than that recommended by the Board of Governors. As Judge Hunter put it in his dissent, "the backdrop of the case was a business transaction between Eddleman and Johansen, rather than a typical attorney and client relationship." Johansen received "a substantial financial advantage,"

and the atmosphere was one "of disputes and misunderstandings where emotions undoubtedly influenced better judgment." And as Judge Poyhonen put it in his dissent, the proceeding "arose in most part in connection with events six to thirteen years ago."

During the course of the hearings Petitioner unsuccessfully sought to locate documentary material that had been placed in the custody of the Superior Court of King County in connection with the litigation in *Johansen* v. *Eddleman*. Among this material was correspondence reflecting the knowledge and understanding of the transaction between Petitioner and Johansen on the part of two persons who had subsequently died, one of whom had been counsel for the bank through which Petitioner obtained the funds necessary to discharge Johansen's debts and make the repairs necessary to render the airplane operative. Also among this material were several hundred pages of the files and records of one Richard Keatinge, a lawyer in Los Angeles who referred Johansen to Petitioner, whose office organized Kern, Inc., and who had correspondence respecting the matters at issue from June of 1951 through 1954.

Unfortunately, these records had been mislaid by the clerk of the Court and were not found until after the evidentiary record in the proceeding was closed. When they were found Petitioner filed a petition for rehearing with the Supreme Court of the State of Washington describing them, attaching copies of some of them and explaining why they were relevant and material, particularly on the issue of Petitioner's motivation and good faith. This issue was crucial, for the opinion of the Supreme Court makes plain that

its order rests on inferences as to Petitioner's motivations, purposes and understanding of the arrangement with Johansen—inferences all drawn from a welter of what it called "conflicting and irreconcilable testimony," the bulk of it that of witnesses such as John Sweet, who were both adverse and personally hostile to Petitioner. Nevertheless, the Court denied rehearing. The petition for rehearing is 49 pages long. The portion of it generally describing the evidence sought to be adduced is attached hereto as Appendix C. The detailed discussion of that evidence and its relation to the evidence of record is omitted in order to keep this Petition within reasonable bounds.

REASONS WHY THE WRIT SHOULD BE GRANTED

This is a case of first impressions. The correct resolution of the issues it presents is not only vital to Petitioner, but also vital to the proper application of the concept of due process of law, which is of course a principal bulwark against governmental procedures that unfairly deprive citizens of their fundamental rights. The basic issue is simply this: Is one's right to practice his profession part of the liberty and property that a state may not deprive him of without affording him the same procedural safeguards that the Constitution requires it to afford one accused of a misdemeanor that is merely *malum prohibitum*?

The proceeding here was admittedly not a criminal one in the technical sense. However, this Court has made clear that the specific rights guaranteed by the Sixth Amendment, made applicable to the states by the Fourteenth, are not confined to criminal proceedings. *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96 (1963); *Greene* v. *McElroy*, 360 U.S. 474, 497

(1959). Among those specific rights is the right to a speedy trial. The right to a speedy trial not only protects an accused against undue delay in the prosecution of charges after they have been brought, but also against undue delay in the bringing of charges. *United States* v. *Provoo,* 350 U.S. 857 (1955), affirming *Petition of Provoo,* 17 F.R.D. 183 (D. Md. 1955).

The primary purpose of a speedy trial, like the primary purpose of statutes of limitations, is to protect the fundamental right to adduce evidence in defense, a right that cannot be effectively exercised after witnesses have scattered or died, memories have grown dim, and documents have been lost or destroyed. See *U.S.* v. *McWilliams,* 69 F. Supp. 812 (D.D.C. 1946). The protection of this right is particularly imperative in cases such as this in view of the ease with which charges of professional misconduct can be lodged, and the propensity of unsuccessful litigants to blame their plight on unfounded allegations of incompetence or misconduct on the part of counsel. Hence, courts have not hesitated to refuse to entertain demands for disciplinary action based on stale claims. *People rex. rel. Colorado Bar Assn.* v. *Tanquary,* 48 Colo. 122, 109 Pac. 260 (1910); *People rex rel. Noyes* v. *Allison,* 68 Ill. 151 (1873); *In Re Whitbridge,* 162 App. Div. 884, 146 N.Y. Supp. 366 (1914). See also *In Re Bond,* 187 Wash. 200, 60 P. (2d) 54 (1936).

In this case Petitioner's alleged misconduct was not brought to the attention of the State Bar until March 11, 1960, nearly nine years after the first transaction in which the Court found Petitioner guilty of misconduct occurred, nearly six years after the controversy

generated by that transaction had been settled, and a year after the Supreme Court of Washington had affirmed a judgment absolving Petitioner from any breach of trust respecting that transaction. Hearings were not held until six months after that.

Meanwhile, time and the tortured and acrimonious course of the dealings between Petitioner and Johansen and his lawyers, including three lawsuits, had taken their toll. Two witnesses were dead. Extensive documentary material had been mislaid in the Superior Court. Martindale-Hubbel had destroyed the letter of the late Mason Wheeler evidencing the existence of the firm of Eddleman & Wheeler. Memories of events and conversations were dim or non-existent. The result was a welter of conflicting and irreconcilable testimony. Yet the Supreme Court of Washington chose to draw inferences that would cast the established facts in the worst light for Petitioner and then, reversing both the hearing panel and the Board of Governors of its Bar, to permanently disbar him.

There can be no doubt that to have convicted Petitioner of a criminal offense in such circumstances would have been to deny him due process of law.* To deprive him of his livelihood as a lawyer in such circumstances was no less to deny him due process of law. *A fortiori,* Petitioner was denied due process of law when he was denied a rehearing for the purpose of adducing evidence that was unavailable at the time of the hearings because lost in the Superior Court, and that was relevant and material on both the issue of his veracity and the issue of his good faith and honorable purposes, the crucial issues in the case.

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* In fact, a criminal prosecution would have been barred by the statutes of limitations. R.C.W. 4.16.040; 4.16.080; 10.01.020.

CONCLUSION

This Court has no higher duty than to assure that the due process clause of the Fourteenth Amendment is interpreted and applied so as to fully achieve its paramount purpose—to assure fundamental fairness in all procedures touching upon the rights of liberty and property. We submit that the discharge of that duty in this case requires the issuance of a writ of certiorari.

Respectfully,

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November 16, 1964

APPENDIX

APPENDIX A

Filed Feb. 13, 1964

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

C.D. 2504 En Banc

In the Matter of

THE DISCIPLINARY PROCEEDING AGAINST
WILLIAM R. EDDLEMAN, an Attorney at Law.

When Anton R. Johansen of Fairbanks, Alaska, consulted William R. Eddleman, a Seattle attorney, in June of 1951, neither could foretell the strange series of events soon to follow, much less than their transactions engendered disciplinary proceedings of the gravest nature.

Johansen, a certified aviation mechanic, owned a two-motored commercial airplane, designated either as a C-47 or a DC-3, which was parked at Boeing Field, Seattle. Hard pressed by numerous creditors. some of whom held liens against his plane, he had talked with Mr. Richard H. Keatinge, a Los Angeles attorney. Since the plane and most of the creditors were in the Seattle area, Mr. Keatinge referred Johansen to respondent Eddleman.

At the time of the first meeting between Johansen and Eddleman, the airplane had not flown for some 22 months, needed mechanical overhaul and maintenance, and repairs to the aileron to cure the damage caused when the wing had been struck by a fork lift operated by Pan American Airlines. This last damage Pan American had agreed to mend.

Following their first meeting in 1951, a number of conversations between Johansen and Eddleman occurred, at some of which John Sweet, a young attorney in respondent's office, was present. These conversations culminated in a definitive plan. Johansen agreed to deliver title of the plane to respondent, who, in turn, undertook to raise some

money, using both the plane and his personal bank account as collateral. Eddleman said he would place the plane in operating condition, pay off all of Johansen's personal creditors, discharge the liens against the plane and obtain repayment of his own funds by chartering the plane out. The plan was explicit except for one salient point: How were Johansen's rights in the plane to be preserved so that, when the time came that both he and it were free of debts and Eddleman had been paid for his services, the airplane would revert to him?

Johansen assented to the plan in general but demurred to its details when he learned that he was to transfer title to Eddleman and receive nothing in writing for it. John Sweet likewise informed both of them that the agreement ought to be put in writing. Respondent said that, since he would be advancing money on his personal credit, he had to be free from the claims of Johansen's creditors. He would not place himself in the position where he could be forced to show a document establishing Johansen's ownership of or claims in the airplane. He insisted that Johansen's ownership be extinguished of record. Mr. Eddleman's refusal to reduce the agreement to writing makes the first item of complaint with which respondent was charged.[1]

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[1] The hearing panel made the following conclusion on this item:

"Respondent's refusal to reduce the Johansen agreement to writing was for the express purpose of deceiving the public and particularly any creditors of Johansen whose names were not included in the list furnished him by Johansen. The advice and service rendered by him in this respect was disloyal to the law and involved or bordered upon dishonesty and corruption. He voluntarily invited condemnation and failed to advance the honor of his profession. His acts were in violation of Canons 15, 22 and 32 of the Washington State Bar Association Code of Ethics, and in violation of his oath as an attorney. He failed to uphold the honor and dignity of the profession and to improve the administration of justice, as required by Canon 29."

The panel recommended reprimand, in which recommendation the Board of Governors concurred.

Johansen remained unconvinced and reluctant to part with title to the airplane until John Sweet, in a private interview with him, assured him that he would, if the situation so required, testify that Johansen was entitled to a return of the airplane upon repayment of all sums advanced by Eddleman together with a reasonable fee for Eddleman's services. Thus assured by Mr. Sweet, Johansen gave Eddleman title to the airplane.

They made these arrangements with knowledge that the Korean conflict, then a year old, had changed the airplane, if flyable, into a valuable property and a likely revenue producer. Mr. Eddleman has never explained how Johansen or his survivors could ever prove any interest in the plane in event of the death of either Eddleman, Johansen or Sweet. Respondent's refusal to reduce his agreement with Johansen to writing violated the ethics of the profession, Canons of Professional Ethics 15, 22, 29, 32, RCW Vol. 0. He assumed the leadership in a plan to deceive Johansen's creditors and the public and to pave the way for further misconduct.

Respondent, Mr. Johansen and Mr. Sweet compiled a list of Johansen's creditors and lien claimants and the amounts of their claims. Respondent borrowed $24,000 from the National Bank of Commerce on both the strength of his title to the airplane and two $$5,000 personal bank accounts as collateral. Since he was about to leave Seattle for several weeks, he assigned Mr. Sweet the job of negotiating with the creditors and their attorneys to compromise the claims and reach a final settlement with each of them. Mr. Sweet says that Mr. Eddleman gave him categorical authority to settle each claim for a prescribed amount, and upon this basis he gave the creditors and their attorneys his personal assurances that the money would be paid on the agreed amounts. Upon his return from the trip, Mr. Eddleman repudiated the settlements, disclaiming authority in Mr. Sweet to reach final compromise. Thereupon, Mr. Sweet resigned from Mr. Eddleman's office. This

latter incident becomes material only in the light of Eddleman's subsequent assertions that his transactions with Mr. Johansen were not those of attorney and client and that he acted merely as a business manager and investor.

Upon his return to Seattle, Eddleman paid all of the listed debts by disbursing $24,604.33. Eddleman said that the airplane, in its then disabled condition, was worth about $41,000 or $42,000, and he bases this estimate on an actual offer made him.

Through Mr. Keatinge, respondent formed a California corporation named "Kearn, Inc." and purchased all of the stock in it. Mr. Keatinge's office associates were carried on the company books as the incorporators, directors and officers, but their functions were purely nominal as Mr. Eddleman was, in fact, the corporation. He transferred title to the airplane to Kearn, Inc., receiving no consideration therefor, and the plane, now free from all liens and rehabilitated mechanically through respondent's efforts and funds, was flown to California where its base of operations remained during respondent's period of control.

In this fashion, any physical evidence of Johansen's claims to or ownership in the plane were extinguished by the transfer to Kearn, Inc., and the removal of the airplane from Boeing Field to California. In California, the plane was leased out through respondent's efforts under three separate successive agreements to different leasees. In September or October, 1951, the first revenue derived from these leases, the sum of $5,000 was repaid to the National Bank of Commerce on its loan to Eddleman.

Out of respondent's refusal to give written evidence of Johansen's rights in the plane comes the next incident for which respondent is held to answer in this disciplinary proceeding. It took place in June, 1952.

Eddleman assumed that he had discharged all of Johansen's debts from the funds advanced to him by the National

Bank of Commerce, but discovered otherwise when served with a writ of garnishment in the case of Blattman v. Johansen, issued out of the Superior Court of King County, cause No. 446298, demanding answer under oath as to "what amount, if any, you are indebted to . . . and what effects, if any, . . . you have in your possession or under your control" of A. R. Johansen and wife. To this writ, respondent made formal answer in writing saying that he has "not indebted to defendants, A. R. Johansen and D. V. Johansen . . . and . . . did not have . . . any effects belonging to said A. R. Johansen and D. V. Johansen". The answer prayed for dismissal of the writ and for a reasonable attorney's fee.

This answer, deliberately made under oath, was false and intentionally misleading. At that time, the plane was in the possession of a corporation created and owned by respondent for the express purpose of managing the airplane. Kearn, Inc., his dummy corporation, did have possession and control of property in which Johansen had a marketable interest. Respondent's answer was thus intentionally misleading and deceptive, again in violation of Canons of Professional Ethics 15, 22, 29, 32, RCW Vol. O.[2]

In May, preceding answer to the writ, attorneys Paul and Morgan, who had brought the Blattman case against the Johansens (Doris Blattman then being a secretary to the law firm of Paul and Morgan and assignee of the claims), submitted to respondent in that action nine separate interrogatories to be answered seriatim under oath. The first question read as follows:

> "1. Did you directly or indirectly, as principal or agent, have a contract with the above named defendants during 1951, relating to a *DC-3* Aircraft?" (Italics ours.)

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[2] For this violation, the hearing panel recommended suspension from practice of law for three years, which recommendation the Board Governors reduced by recommending one year's suspension.

Eight other questions followed, asking for information as to the capacity in which the witness acted, whether as principal or agent, whether the contract was oral or in writing, to state its terms in detail, and whether it had been assigned, and, if in writing, who was the custodian of it, and other inquiries of a similar nature. On June 18th, only a few days after he had answered the writ of garnishment in writing, respondent made written answer to the interrogatories as follows:

> "ANSWER TO QUESTION No. 1: No
>
> "In view of the answer to Question No. 1, questions No. 2 through No. 9 inclusive cannot be answered by this witness."

At the diciplinary hearings on this phase of the complaint, Eddleman sought to justify his answer, claiming that the airplane which he had received from Johansen was a *C-47*, and not properly labeled as a *DC-3* and that, he was technical but truthful in saying that he had no contract with Johansen concerning a DC-3 plane. All witnesses having knowledge of airplanes are agreed that the designations C-47 and DC-3 are and were interchangeable. C-47 is the name for the military version of the DC-3, and R-4D is its designation by the naval service. In all of the negotiations leading to the transfer of the title and the subsequent chartering of the plane, the two designations were interchangeable. Eleven separate exhibits filed in the hearing show that the plane was referred to and designated as a DC-3, including a lease negotiated by respondent to a Currey Air Transport Company; a mortgage by Kearn, Inc., respondent's wholly owned corporation to the bank; four insurance riders; several memoranda as to the leases; a repair order; and a letter written by Mr. Eddleman. Altogether, respondent gave three explanations to the hearing panel for his denial of a contract concerning a DC-3 airplane: (1) He said that he had no contract at all with Mr. Johansen in 1951; (2) that as

a part of the original understanding with Mr. Johansen, he thought he was to be engaged as Mr. Johansen's lawyer, but, on learning that Mr. Johansen intended to retain Mr. Robert Beresford as his attorney, there was no meeting of the minds and he had in fact no agreement, and, thus, no contract; and (3) the airplane was a C-47 and not a DC-3.

Through a welter of conflicting and irreconcilable, testimony, we can find no basis on which to sustain respondent's answer. Accordingly, the answer to interrogatory No. 1 must be deemed false and misleading and given with a design and purpose to deceive. It invites discipline for violation of Canons of Professional Ethics 15, 22, 29, 32, RCW Vol. O, as being corruptly made and constituting chicanery by a member of the Bar.[3]

We find no sensible explanation for respondent's deceptive answer to this clear interrogatory, and any claim to candor in its making evaporates in the next event when attorney Frederick Paul, counsel for plaintiff Doris Blattman, the next day, on January 6, 1953, took respondent's oral deposition before a court reporter. Here is the testimony given:

> "Q. Did you have a business transaction with the defendants in this action during 1951? A. Well, suppose you define 'business transaction'. Q. A very broad term,—the broadest kind of term you can imagine. A. Do you want me to take my interpretation or yours? A. Just say yes or no. Did you have a business transaction with the defendants in this case in 1951? A. In 1951 I was consulted as an attorney. On first meeting A. R. Johanson I did not enter into a contract of employment with him as an attorney. I think it was sometime along about May or June that he presented me with a number of claims which he told me he had against a DC-3 airplane that was about to be sold by a sheriff's sale, and he offered to sell that

[3] For the deceptive answer made to the written interrogatories, the hearing panel recommended suspension for three years.

plane to me, and I purchased it from him. All considerations due him were paid at that time, and the title was conveyed by a regular bill of sale, which is recorded with the C.A.A. or C.A.B. in Washington, D. C. Q. So you had a business transaction in 1951 consisting of the purchase of an airplane from the Johansons? A. That is correct. Q. Now, what are the documents recording that transaction? A. None except the one I just outlined. Q. A bill of sale: Do you have a copy of the bill of sale? A. I do not. Q. Where are the copies of the bill of sale? A. In Washington, D. C., in the C.A.A.'s office. Q. Do you have the recording number of the bill of sale? A. I do not. Q. Do you have the date of its recording? A. I do not. Q. Did you have any agreement with anyone about the repurchase of that airplane? A. No. Q. How much did you pay for it? A. I don't remember. Q. In the neighborhood of— A. Around 35 to 45 thousand dollars. Something like that. I don't remember precisely. Q. Someplace between 30 and 45 thousand dollars? A. Something like that. Q. And that was paid either directly to him or his creditors? A. That is correct. (Pause) No, that is not quite correct, either. Q. Who did you pay it to? A. Part of it was expended by putting the plane in condition. As you know, it was sitting out in a field with grass growing up around the wheels and between the spokes, and vandals having taken a lot of stuff out of it and off of it and a Pan-American plane had run into it and damaged it. There were a number of those things that I include in the capital valuation that I invested in the plane. Q. Putting the plane in condition was an obligation that you assumed after you purchased it? A. No obligation that I assumed. It was just something anybody that is sensible in business would know they would have to do. Q. I want to know what the consideration was that you paid to Johanson for the purchase of the aircraft. A. I have already answered that. Q. Well, was it cash directly to Johanson? A. It was paid to him or for his benefit. I don't remember precisely how the checks were made out or to whom. I didn't, as a matter of fact, make out all of them. Some of my employees did. Q. Did you form a corporation in connection with the aircraft? A. No. Q. No? Is that your answer? A.

No. Q. Do you still have legal title to the aircraft? A. No, I sold it for exactly the same I paid for it. Q. Who did you sell it to? A. I sold it to a California Corporation. Q. What is the name of the corporation? A. Kearn, Incorporated. Q. How is it spelled? A. K-e-a-r-n (spelis). Q. Where is their principal place of business? A. I don't know. Q. Do you know any of the employees or officers of the corporation? A. I do not. Q. Do you know where it maintains any office? A. I do not. Q. Do you have any interest in that corporation? A. Yes, I have an interest in it. . . . Q. Does this corporation have any kind of a business relationship of any variety with Tony Johanson? A. None that I know of whatsoever. Q. Who would know if the corporation did have? A. I am sure if there were any, I would know it. Q. Does the corporation have any business relationship with Tony Johanson of any variety? A. None. Q. There is no obligation running from this corporation to Tony Johanson? A. None. Q. Was there ever? A. Never."

We agree with the panel that these answers involved moral turpitude, dishonesty and corruption and constituted fraud and chicane in violation of Canons of Professional Ethics 15, 22, 29, 32, RCW Vol. O.[4]

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[4] "Respondent's answer to Interrogatory No. 1 propounded to him in the Blattman case was knowingly false and misleading and made with intention to deceive. His acts in this regard involved moral turpitude, dishonesty and corruption, and constituted fraud and chicane, in violation of Canons 15, 22, 29 and 32.

"In answering questions propounded to him in his deposition in the Blattman case, respondent was not candid and truthful, particularly in regard to the provisions of the Johansen agreement with respect to the eventual return of the plane to Johansen. In many instances, his answers in the deposition were evasive and contradictory. He failed to live up to his oath as an attorney and violated the canons of ethics hereinbefore mentioned." Conclusions, Board of Governors.

The panel recommended suspension from practice on each of the above items for three years. The Board of Governors on these items recommended a reprimand on one item, and one year's suspension on the other.

That respondent intended to exclude Johansen from any claim of ownership in the plane is seen from his letter to Johansen written January 7, 1953, the day following the oral deposition. On January 5th, Johansen had written respondent pointing out that a year and one half had passed since he had turned the plane over to respondent; he wished an accounting of the plane's earnings and expenditures, and requested that no further arrangements be made for operation of the plane. He advised respondent that he (Johansen) could make payment in full to him as soon as they arrived at a reasonable figure. Respondent's letter of January 7, 1953, to Johansen, stated in part:

> "Your letter of January 5 appears to have been written by someone not familiar with the sale of NC74663 to myself nor my sale to a corporation. As you know, I have never lent you any money nor do I have any legal obligation to return same. Neither is there any obligation to make an accounting, however if you are interested in the purchase or operation of this plane I am advised the corporation is very interested and will be glad to make available full records of operation and expense as well as any other information you require to make an immediate offer concerning which I called you . . ."

With this letter respondent burned his bridges behind him, for in it he not only claimed ownership of the plane but dealt at arm's length with his client by negotiating with him for a sale of the plane as though he were a stranger.

Attorney Robert Beresford of the Seattle Bar had represented Johansen for several years prior to the plane transaction with Eddleman. He remembered a conversation at the Rainier Club in Seattle in 1951 at which his law partner, Wayne Booth, and Eddleman were present. He remembered that Eddleman had said, in explaining the deal with Johansen, that he intended to take title to the plane and through it and his own credit obtain enough money to

pay off the various creditors. Eddleman intended to rehabilitate the plane, lease it out, and recover from the leases an amount sufficient to pay all costs together with a reasonable fee to himself (Eddleman); thereafter the plane would be returned to Johansen. Mr. Beresford recalled that out of this conversation and others, Mr. Eddleman had paid Beresford's law firm a fee of $1,500, which was owing them from Johansen for legal services. When Mr. Beresford learned of respondent's answers to the written interrogatories and upon oral deposition, he informed Mr. Frederick Paul, attorney for the plaintiff in the Blattman suit, of this Rainier Club conversation.

Shortly thereafter, apparently upon being reminded that both Mr. Booth and Mr. Beresford were prepared to testify that Johansen had made neither a gift nor a sale of the airplane to Eddleman, but, on the contrary, that he (Eddleman) had admitted to them his obligation to return the plane to Johansen, Eddleman shifted his ground, and, in a letter on January 28, 1953, indicated that he would return the airplane upon receiving reimbursement for all moneys advanced by him together with a reasonable attorney's fee. This evidence establishes almost conclusively that respondent never had rights to the ultimate ownership of the plane nor did he honestly believe in the existence of such rights.

This brings us to the next items in the complaint of this disciplinary proceeding; they have to do with the claim of breach of trust brought by Johansen accusing respondent of a conflict of interests in negotiating a lease of the aircraft with Currey Air Transport, Ltd.

In the spring of 1953, respondent discussed a proposed charter of the plane with a Captain Herman and his wife who controlled Currey Air Transport. Mrs. Herman's brother owned an airplane ticket agency called Skycoach Air Lines Agency. This ticket company owed respondent a fee for legal services. Mrs. Herman said that Currey

Air Transport would not enter a lease agreement with respondent until the fee with her brother had been adjusted. Skycoach Air Lines Agency and respondent agreed upon a fee, and it was paid; the lease of the airplane with Currey Air Transport was thereupon completed.

Currey Air Transport agreed to pay Kearn, Inc., $1,000 a month for 16 months and to perform expensive repairs and alterations to the plane, running into thousands of dollars in costs. An extension of this lease later for 3 months brought the plane two new engines and an additional $500 in cash to Kearn, Inc. In October, 1954, while the lease to Currey Air Transport, as extended, had only 2 more months to run, respondent, in compliance with insistent demands upon him by Johansen through his attorney, Mr. Beresford, furnished them with a detailed auditor's report on Kearn, Inc., covering the company business activities from June 30, 1951, to September 30, 1954. This auditor's report shows that the gross income received from the rental of the airplane for the fiscal year ending June 30, 1952, was $23,500; for the fiscal year ending June 30, 1953, $12,000; for the fiscal year ending June 30, 1954, $12,000; and for the 3 month period ending September 30, 1954, $3,000.

Other income derived from the operation of the airplane through Kearn, Inc., respondent's alter ego, consisted of the installation of two new motors, together with major repairs and important changes to put the plane in good mechanical and flying condition.

Negotiations between Johansen and respondent for the return of the plane to Johansen, upon his repeated and persistent demands, culminated in their meeting at the bank in November, 1954. Mr. Johansen's attorney, Mr. Beresford, accompanied him to the meeting. Mr. Eddleman had prepared and brought to the meeting several copies of a release for signature. In accordance with the agreement earlier reached, Mr. Johansen paid respondent

a fee of $9,000 for services in managing the plane, rehabilitating his credit, and kindred professional services. Respondent then turned plane over to Johansen by transferring to him all of the stock in Kearn, Inc. This gave Johansen his airplane and mastery of the corporation. The parties signed mutual releases exonerating each from further liability arising from the airplane transaction. Mr. Eddleman had paid $1,020 for the stock in Kearn, Inc., so his actual fee on the receipt of the $9,000 came to $7,980.

This exchange of releases did not terminate the relationship of the parties, for some time later Mr. Johansen learned of the fee paid to Eddleman by Skycoach Air Lines Agency while Eddleman had been negotiating the lease of the plane to Currey Air Transport. Johansen asserted that he had no knowledge of Mr. Eddleman's dual negotiations and that the $16,000 rental for 18 months' operational use of the plane was inadequate. He asked Mr. Beresford to bring suit against Eddleman for an accounting.

Mr. Beresford, remembering the execution of the mutual releases at the bank, advised against such an action as he assumed that insufficient evidence would be available to abrogate the releases.

Thereupon, Mr. Johansen employed Mr. Frederick Paul —the same attorney who had confronted respondent in the garnishment proceeding, the written interrogatories and the depositions—to bring suit against respondent for an accounting of the use of the airplane and income derived therefrom during its operation by Kearn, Inc. Mr. Paul seems to have accepted this employment with more than customary eagerness, and his zeal in prosecuting the claim can in no way be said to have been diminished by his prior professional relationships with respondent. The trial of this cause, Johansen v. Eddleman (King County, No. 515126), produced another item of the disciplinary complaint; it comes from the testimony given by respondent

at the trial. He testified in superior court in this case that, in the summer of 1951, when he took over the plane, he believed its value to be $43,000—that indirectly he had received an offer in this amount from a party in Wyoming.

He admitted that, except for his paying about $27,000 of Johansen's debts, Johansen received nothing from respondent for his giving up to respondent title to the aircraft. He said again he felt no legal obligation to return the airplane but only a moral one upon payment of a reasonable fee and reimbursement for all debts discharged by him. But counsel could not pin him down in his examination as to what, in respondent's estimation, a reasonable fee might have been. He said that his claim to ownership was subject to only a moral obligation to return the airplane—and this on compliance with conditions to be laid down by respondent. It was this moral obligation, coupled with Johansen's violent disagreement with respondent's claim of ownership, that induced respondent to accept the offer contained in a letter from Beresford in January, 1953, of a fee of $9,000 for return of the plane.

Respondent insisted in his testimony that, notwithstanding his acceptance of the Beresford offer, Johansen never had an option to repurchase the plane, that respondent's granting such an option to repurchase was in fact a mere matter of grace to resolve a dispute with a client. He admitted that, despite Johansen's problems with creditors, Johansen was not without resources as he held a high certificate under Federal regulations as an aviation mechanic authorizing him to certify to the most intricate and important repairs that could be done to an airplane and that Johansen also was a member of the nonscheduled aircraft industry owning a transport operational certificate having a market value of possibly $100,000. Concerning the previous conflicting statements given by him concerning his arrangements with Johansen, he stuck by his earlier position that Johansen had only respondent's moral undertaking

as a lawyer and a gentleman to accept full reimbursement plus a fee to be fixed by respondent in exchange for the airplane.

He was examined concerning his answers on deposition in the Blattman case and first declined responsibility for them by testifying that he had not signed the deposition, had not waived signature and, therefore, had not completed it. But, on being pressed for answers, confirmed the answers as given in the deposition. He again asserted that Johansen had no legal rights in the plane by saying:

> "Mr. Johansen had a right to make an offer to me . . . and the reason it was done in that manner was to protect him and the plane against the indebtedness which were of an indeterminate amount."

Thus respondent is caught in the web of unethical practices, and through earlier conflicting statements challenged the credulity of the court by implying that these practices were undertaken to preserve to his client the very thing the client had been deprived of, his airplane. We accept the condemnatory findings of fact made by the hearing panel as to its evaluation of the respondent's testimony in King County cause No. 515126.[5]

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[5] "VIII. During the trial of Case No. 515126, respondent attempted to explain his answers in the deposition of January 6, 1953, (Assn. Exh. 4), where he said he did not have any agreement about the repurchase or return of the airplane, by stating that the deposition had not been signed by him and that it, therefore, had not been completed.

"IX. Respondent's conduct and testimony during the trial was such that, in open court, the trial judge stated:

" 'I must say that I think Mr. Eddleman's veracity has been impeached in many respects, even by words out of his own mouth given on different occasions, so on issues of fact where he says one thing and Mr. Johansen says another, I attach greater credibility to the testimony of Mr. Johansen than I do to that of Mr. Eddleman.'

"X. Respondent, in his answer and on various occasions while testifying or subscribing statements under oath, has made such a

At the conclusion of the evidence, the trial court found as a fact that the fees received by respondent from Skycoach Air Lines Agency, while he was negotiating with Currey Air Transport for the latter's rental of the plane, were not excessive for the services rendered and that the lease to Currey was not affected by such fee, and, in addition, was the best bargain to be made under the circumstances. Hence, it was found that respondent received no secret profit and that plaintiff suffered no loss. The case was accordingly dismissed. We affirmed on appeal *Johansen* v. *Eddleman*, 54 Wn. (2d) 871, 343 F. (2d) 737. The court did find, though, that throughout the leasing of the airplane a fiduciary relationship existed and that respondent acted in the role of trustee for Johansen, however reluctantly.

Quickly following in the wake of the commencement of the superior court action (Johansen v. Eddleman, King County cause No. 515126), respondent set in motion a new chain of events which ultimately gave rise to an additional charge of violation of canons of ethics. Understandably indignant at Johansen's suit for an accounting—having assumed that the airplane transaction between them had been finally resolved and discharged at the meeting in the National Bank of Commerce in November of 1954, when Mr. Beresford had represented Johansen to conclude the matter—respondent allowed his indignation to get the better of his judgment. Three days after he had received the summons and complaint in Johansen's accounting suit, respondent commenced an action at law against Robert

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variety of contradictory statements, many of which are in direct opposition to an overwhelming preponderance of the evidence and his explanations for making such statements have been so groundless that the Hearing Panel has difficulty in granting much credibility to his testimony."

The hearing panel recommended on this item suspension for three years and the Board of Governors modified this by recommending one year's suspension thereon.

Beresford and wife, referring in his complaint to "surrender by the plaintiff to the defendants of all rights he held in and to a certain DC-3 aircraft" and alleging that defendants "with intent to defraud and deceive plaintiff . . . misrepresented . . . that he had authority to settle all claims on behalf of himself and Anton R. Johansen and Dorothy V. Johansen, his wife, concerning management and operation of a DC-3 aircraft" knowing the same to be false. The complaint accused Beresford of breach of contract, fraud and conspiracy to defraud, and asked damage in the sum of $250,000.

Served with the summons and complaint upon Mr. Beresford and his law firm was a personal letter dated December 2, 1957 on Mr. Eddleman's office stationery addressed to Wright, Booth & Beresford, attention of Mr. Beresford. It accused Mr. Beresford of referring his own files and the claim in the accounting suit to attorney Frederick Paul, of conferring with the latter to institute the action, and closed with these words:

> ". . . Unless the action in question is dismissed with prejudice and a letter received, signed by a member of your firm and by Fred Paul, acknowledging the true state of affairs, prior to one week from this date, I will file the action which is herewith served and will find out how much a jury thinks the damages caused by your activity are worth."

Mr. Beresford filed an answer denying the complaint and all of its implications, asserting that he had no interest in Johansen's claim against Eddleman except his interest in representing Johansen as the latter's attorney in negotiating for and arranging the return of the aircraft. He averred that he had declined to act as counsel for Johansen in the accounting action against Eddleman; at Johansen's directions he had turned over all of the files in the Eddleman matter to Mr. Paul; and he had no interest in and would not participate in the action unless required to do so as a witness.

On December 20, 1957, in this case—which, in the meantime, had been filed by respondent—defendant Beresford took Eddleman's deposition. Curiously enough, the airplane is referred to throughout by all parties as a DC-3 and no one questions its identity because of this. Throughout the deposition in this case, we again have the same doubts expressed by respondent that his actions were those of an attorney; he persisted in referring to his compensation as a management fee and steadfastly declined to label it as an attorney's fee. Once more he asserted under oath that he had been under no legal obligation to return the airplane to Johansen but merely a moral one. He also testified in this deposition that he had turned over all of his files to Beresford so that on a thorough search of his office records, when served in the accounting action, he could find no evidence of a release from Johansen. Shown a copy of the release written on Eddleman's letterhead at the deposition and being examined upon it, respondent expressed doubt that it had been prepared by him. He then stated that the release had not been delivered to him when he received the $9,000 in full discharge from Johansen. He had no doubt that the signatures on the release were genuine.

The inconsistencies and evasions in respondent's testimony are too numerous for us to describe. Briefly, respondent's action against Beresford was shortly thereafter dismissed with prejudice, but with costs to the defendants on January 8, 1958. Mr. Beresford paid nothing to respondent for the dismissal. Even though the action resulted in respondent's obtaining a copy of the release which he himself had prepared and caused to be signed by both parties, his testimony in the deposition shows conclusively that he had never been misled or deceived by Mr. Beresford as to its existence. Nor would Mr. Beresford have any reason to believe that, when respondent turned over the Johansen files to him, respondent would not have kept an executed copy of the release for his own protection.

Respondent's later attempted explanation does not stand up when he asserts that he brought the action against Mr. Beresford because he had never been furnished with a copy of the release. There is no averment in the complaint or in the letter accompanying it referring to such a release (or its evidentiary equivalent), nor is there any evidence whatever that demand or request for the release had ever been made by respondent upon Beresford. We concur with the hearing panel in its conclusion that the action was dishonorably motivated in violation of Canon of Professional Ethics 29, RCW Vol. O, and brought for the purpose of harassing and injuring the defendant in violation of Canons of Professional Ethics 30, 32, RCW Vol. O.[6]

One final item of complaint warrants comment, a charge of the improper use of the partnership of Eddleman and Wheeler in violation of Canon of Professional Ethics 33, RCW Vol. O.

Mason Wheeler, a man of means, had practiced law in Seattle for many years prior to his death in May, 1948. During his latter years, he had rented office space from respondent in a suit shared by several lawyers, all of whom were engaged in separate, individual practice. The names on the doors indicated individual office practice and no partnership association. Although the relationship between respondent and Mason Wheeler appeared to be one of trust and confidence, as is noted by Mr. Wheeler's recommendation to his corporate executor in writing that respondent be engaged as an attorney for his estate in case of his death, and respondent's designating Mason Wheeler as authorized to draw checks on respondent's bank account, there is no evidence whatever that Mr. Wheeler ever contemplated partnership with Mr. Eddleman. Indeed, at the

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[6] The hearing panel recommended suspension from practice for three years, which recommendation the Board of Governors amended by recommending suspension for one year.

time of Mr. Wheeler's death in May, 1948, respondent's office letterhead bore only his own name.

About 4 months after Mr. Wheeler's death, that is, during September or October, 1948, respondent commenced using and ever since has used office letterhead and stationery bearing the firm name of Eddleman & Wheeler, some specimens of which indicate Mason Wheeler to have been practicing law years after his death, and other samples of which carried the year of his death in small printed notation.

We agree with the hearing panel that this was a misuse of a deceased lawyer's name and was done for the purpose of deception, all in violation of Canon of Professional Ethics 33, RCW Vol. 0, and that the hearing panel rightly recommended a reprimand for this violation.

This disciplinary proceeding, initiated by formal complaint filed at the direction of the Board of Governors, came on regularly for hearing before a hearing panel consisting of a member of the Board of Governors and two other lawyers. At the conclusion of the hearings, the panel made findings of fact, conclusions of law and recommendations. It drew seven distinct and separate conclusions, based on distinct and separate events, that respondent's conduct, over a protracted period, had been markedly unethical. It made five separate and distinct recommendations that respondent be suspended for a period of three years, and on two other claims that respondent be reprimanded. Thereupon, the findings of fact, conclusions and recommendations of the hearing panel were referred to the Board of Governors. The Board approved and adopted the findings of fact; it approved the conclusions and the general conclusions of the hearing panel. The Board declined to concur in the recommendations of the hearing panel in all items except two. It modified one recommendation, a three-year suspension, by recommending a reprimand; two items of the recommendations that respondent

be reprimanded, the Board approved; four items, on which the hearing panel recommended three-year suspensions, were modified by the Board by a recommendation of suspension for one year. In the light of all of these findings, conclusions and recommendations, ours is the duty to make a final judgment.

Respondent concedes his departure from the ethical standards of the profession in some degree, but asserts that a reprimand is sufficient punishment to both protect the public and vindicate the profession. He points out that his lapses in judgment and professional behavior are in part counterbalanced by the good results obtained by him for a difficult client. He claims that no one was harmed or cheated by him or suffered any pecuniary loss. Many of his client's debts were discharged, including some attorney's fees that perhaps would never have been paid.

And, when it was all over, he returned to his client a fine, serviceable airplane free from all debts and liens, thus yielding to the client, through respondent's professional services, a benefit computed by respondent at about $65,000 in value. He points to the long period of time during which he is held accountable, commencing with events in 1951, and asks the benefit of the doubts normally thought to inhere in proof based on conversations only partially, or inaccurately, remembered, or obscured by both time and passing events.

He asks that these events be reviewed in the softened light of time and distance, and that we consider that Mr. Paul—who pursued him so relentlessly after the deceptive answer to the writ of garnishment had been given—harbored toward respondent a feeling of enmity and ill will.

Time has neither dimmed nor softened the effects of respondent's misconduct as a lawyer, but, on the contrary, sharply etches his actions against a continuing daily practice of his profession over several years. Nothing he did or said can thus be held to be the product of sudden

anger, or yielding to an overwhelming temptation. Rather, his actions demonstrate a determined will to prevail, whatever the costs or consequences. Time after time, he had the chance to alter his conduct, to make amends and withdraw from the course he pursued with such ardor.

Mr. Eddleman's course of conduct over a period of years brings him squarely within the letter and spirit of Rule for the Discipline of Attorneys 1, RCW Vol. 0; 57 Wn. (2d) xlvi; 4 Orland's Wash. Prac. Supp. 107. Both the hearing panel and the Board of Governors fittingly described this course of conduct in a formal, general conclusion, as follows:

> "The evidence submitted to the Hearing Panel shows that respondent was guilty of acts involving moral turpitude, dishonesty or corruption; that he violated his oath and duties as an attorney, violated various canons of ethics of the profession adopted by the Supreme Court of the State of Washington, and was guilty of a course of conduct demonstrating unfitness to practice law."

We start with his sly refusal to give his client a written proof of the client's rights in the airplane against respondent's duty to return the same to his client. By this device he assumed control of his client's property at virtually no risk to himself, for, by his own evidence, he advanced some $27,000 on a plane for which he had been offered $41,000. The Korean conflict had been on for nearly a year. By expending the $27,000, respondent, who had knowledge of the air transport business, knew that not only would all liens be lifted but that the plane would be restored to flying status.

From that point on, including his deceitful answers to the writ of garnishment, his false and misleading answers to the written interrogatories under oath, he showed his continuing unfitness to continue in the profession; and in

his false, deceitful and misleading answers under oath on oral deposition, he continued a course of action demonstrably characterized by deceit, pettifoggery and dishonor. His evasions under oath, both in the trial of the accounting action in the superior court, and in the trial of this disciplinary proceeding before the hearing panel, showed that time and travail had taught respondent little concerning the ethics of the profession or his responsibilities to it, the court and the public.

As if his actions might possibly be viewed in an ambiguous light, he emphasized his previous and concurring misconduct by maliciously bringing an action against a fellow lawyer, soley for the purpose of coercing the lawyer into embarking on what in itself would be deemed to be unethical conduct; that is, to force the lawyer to take steps to dissuade a client from maintaining an action at law which the client had the right to bring. This in itself is a form of corruption. The action against the fellow lawyer, accompanied as it was by a threatening letter, has no justification that we can find either in vindication of the respondent's rights or in enforcement of a correlative duty owed him by the defendant. Respondent clearly maintained the action for purposes of harassment, coercion and malice.

And all during this time, stretching over several years—in a minor sense it is true—respondent carried out his professional activities under a false and deceptive partnership name. This violation of the professional ethics, while minor in degree when compared to the gravity of the other violations noted, further shows respondent's cavalier disregard of his professional responsibility.

We do not think the long period over which these violations took place makes the respondent less culpable, but, on the contrary, emphasizes his continuing unfitness to practice law. He was, and is, unfit to continue in the

profession, and he is, therefore, disbarred. His name shall be stricken from the roll of attorneys.

HA—,

WE CONCUR:

OTT, C. J.
HILL, J.
DONWORTH, J.
ROSELLINI, J.
HAMILTON, J.

No. C.D. 2504

FINLEY, J. (dissenting)—I do not concur in the majority opinion. It is my view that the court, in disposing of this matter, should adopt the recommendations of the Washington State Bar Association Board of Governors, nothing more, nothing less.

FINLEY, J.

No. C.D. 2504

HUNTER, J. (dissenting)—I dissent. I feel disbarment is too severe a penalty in view of the circumstances out of which the unethical conduct of the respondent arose; the failure of evidence to establish that the respondent profited at his client's expense; and which, to the contrary, shows a substantial financial advantage gained by the client by reason of the respondent's services.

The backdrop of this case was a business transaction between Eddleman and Johansen, rather than a typical attorney and client relationship. The misleading evasive tactics of Eddleman began when creditors of Johansen were attempting to garnishee his interest in the C-47 aircraft. Eddleman was the garnishee defendant in the proceeding wherein Johansen was the principal defendant.

Eddleman's subsequent unethical conduct, revolving about his dealings in connection with the aircraft. was in bitter adversary proceedings in an atmosphere of disputes and misunderstandings where emotions undoubtedly influenced better judgment. Moreover, much of the controversy was subsequent to the execution of a mutual release and settlement upon a suit instituted by Johansen against Eddleman, which undoubtedly rekindled and intensified the bitterness and misunderstandings.

In the beginning Johansen had an aircraft that was to be sold at a sheriffs's sale to satisfy $24,604.33 in creditor's claims. Eddleman took title to the aircraft, paid off the obligations, and operated it under a corporation in which he was the sole stockholder. The aircraft was rebuilt and extensively repaired and new motors were eventually installed. After approximately three years of controversy between Eddleman and Johansen as to the understanding relative to use of the plane, a voluntary mutual release and settlement was executed, with Johansen paying Eddleman $9,000 in attorney fees and Eddleman, in turn, placing Johansen in ownership and control of the aircraft, which resulted to Johansen's benefit in the value of approximately $65,000.

I believe the Board of Governors of the State Bar Association had this over-all picture in mind when it recommended four one-year suspensions from the law practice and three reprimands as punishment for the respondent. I deem this sufficient and would follow the Board's recommendation.

HUNTER, J.

No. C. D. 2504

POYHONEN, J. Pro Tem. (dissenting)—I would adopt the recommendations of the Board of Governors of the Washington State Bar Association. I believe that the board must have taken into consideration the fact that respond-

ent's misconduct, serious as it was, arose in most part in connection with events six to thirteen years ago. Time and distance alone would not excuse him, but in recommending the punishment to be imposed in 1964 the board may very well have taken into consideration the respondent's conduct as a lawyer during the past six years.

POYHONEN, J. *Pro Tem.*

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. C.D. 2504

In the Matter of

THE DISCIPLINARY PROCEEDING AGAINST

WILLIAM R. EDDLEMAN, an Attorney at Law

Order Denying Petition for Rehearing

The Court having considered the respondent's petition for rehearing, together with a petition and order for stay of proceedings, a supplemental brief on the petition for rehearing, and an answer to the petition for rehearing, and a majority of the Judges being of the opinion that it should be denied,

IT IS ORDERED that the petition be and it is hereby denied.

Dated this 19th day of June, 1964.

By the Court:

RICHARD B. OTT
Chief Justice

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the
Disciplinary Proceeding Against
William R. Eddleman, an Attorney at Law.

C. D. 2504

Petition for Rehearing En Banc

The petitioner, William R. Eddleman, presents this petition for a rehearing of the above cause and/or having the above matter sent back to the Trial Committee for further consideration and findings, and in support thereof, respectfully shows:

1. The appeal in this cause was argued before this Court on the 14th day of October, 1963.

2. On February 13, 1964, this Court rendered its decision disbarring petitioner and modifying the recommendation of the Washington State Bar Association, Trial Committee and Board of Governors.

3. That William R. Eddleman seeks a rehearing upon the following grounds:

(a) That petitioner has located substantial records, to-wit, all of the files and records of Richard H. Keatinge, an attorney who had correspondence with petitioner, Johansen, Beresford, Sweet and others relating to the airplane transaction and beginning in June, 1951 and continuing through the period in which after 1954 Johansen had possession and control of the airplane herein. That these records were not available to petitioner at the time of the hearing through no fault of his own but due to the fact that the same had been lost or misplaced and could not be found in the office of the Clerk of the Superior Court of King

County as was stated by petitioner in the course of the disciplinary hearing and acknowledged by counsel for the Bar Association therein. That these records consist of several hundreds of pages, a few of which have been supplied, certified to by the Clerk of the Superior Court of King County with the original of this petition. That these records contain information and facts vital to the defense of petitioner and to the vindication of his honor and integrity in the legal profession. That these records would have been invaluable in questioning and cross-examining the adverse witnesses who appeared against petitioner in the proceeding and would be so valuable in establishing facts pertinent and germane to the determinations and decisions reached by the Court bearing upon the reason and occasion for the agreement not having first been reduced to writing and the original discussions in June and July not having resulted in an agreement. That these records demonstrate that the bill of sale from Johansen was obtained after petitioner was absent from the offices of Richard Keatinge in California and taken together with other facts and records demonstrate that neither petitioner nor Johansen were present or conferred at the time of the receipt thereof or prior to the time the plane had been placed in the name of Eddleman by Sweet and Sweet had made representations to creditors in excess of his authority in petitioner's absence.

These records further demonstrate constant and continuing refusal of Johansen to enter into any agreement or to state any agreement with petitioner prior to the Blattman deposition. That these records reflect the value of the plane in 1951 at $30,000.00 and reflect advances which taken with those matters already before the Court demonstrate total advancements by petitioner as purchase price or otherwise of approximately $35,000.00. That these records

support Eddleman's constant good faith to Johansen and the absence of the intention to deceive or defraud any creditors of Johansen. The copies herein demonstrate the existence of letters in the pertinent period in 1953 with respect to information then needed to explain the petitioner's position and which was more vitally needed at the disciplinary proceeding. That these records reflect and show the knowledge of S. N. Greenleaf, counsel for The National Bank of Commerce, with respect to the transaction, he having been deceased at the time of the disciplinary proceedings and having served as counsel for The National Bank of Commerce with whom petitioner dealt concerning the aircraft herein. That these records demonstrate the lack of knowledge on the part of petitioner with respect to the corporate affairs of Kearn Inc. concerning which he testified in the Blattman deposition. That these records further demonstrate that Johansen was happy with the arrangements with respect to the Currey lease concerning which in the final analysis on diversity of interest he complained at a later date in the Johansen v. Eddleman litigation.

That the importance of these records is demonstrated by the following portions of this petition, it having a bearing upon the testimony given adversely to the petitioner and the findings that resulted therefrom as further demonstrated hereinafter in this petition.

That in addition to the foregoing records which consist of several hundreds of pages, petitioner has found in the archives, transferred from Alaska, records of the receivership proceeding existing in Alaska, certified copies from which are offered with the original of this petition. That these demonstrate that a value was placed upon the plane April 14, 1951,

of $25,000.00, that Fred Paul and his brother, William L. Paul, Jr., served as attorneys for the receiver, that although they accepted the money paid by Eddleman in 1951, none of it was reported in the receivership, though made payable to the receiver and that they thereafter filed the same claims which were settled by Beresford in the Blattman case. That the difficulty in locating these files was due to the fact that Johansen then lived in Fairbanks and the proceedings were filed in Juneau. That the details and pertinency of these are further covered hereinafter and would be and are of substantial value both in cross-examination of the witnesses and the establishing of facts to demonstrate petitioner's position with respect to purchase of the aircraft and the absence of any effort to deceive or defraud creditors on the part of the petitioner.

That additionally petitioner has discovered the record of a telephone call in July, 1954 with Robert O. Beresford which demonstrates Beresford's knowledge of the difficulty of reaching any decision or agreement with Johansen as well as petitioner's good faith connected therewith, transcript of which is filed with the original of this petition and details and pertinence of which bear upon the good faith of petitioner's dealings with Beresford.

That the record of said telephone conversation was made on a Gray audograph in 1954 and had been misfield and misplaced in petitioner's office and was not located during the time of the disciplinary proceedings but is presently available and properly marked.

That additionally petitioner has, through the efforts of a court reporter, located the records of the deposition of Robert O. Beresford taken on May 20, 1958. That the court reporter was no longer connected

with the firm of court reporters through whom the petitioner had arranged the taking of the deposition and located the same only after much diligent search which petitioner stimulated after an examination of the other records including the Keatinge records herein and that the copy of the deposition as certified to by the court reporter is hereto attached which demonstrates Beresford's knowledge of the good faith of petitioner as well as a fluid situation that existed between 1951 and 1954.

That said deposition together with the telephone conversation supports Beresford's knowledge of the difficulty of reaching any agreement with Johansen as well as petitioner's extreme desire to do so, as detailed more fully herein.

That the records discovered in the Superior Court's vault in King County of Keatinge pointed to the relationship of other records available to petitioner at the time of the hearing but not deemed pertinent without the foregoing Keatinge records, to-wit, records of Western Union telegrams which in copied form are supplied with the original hereof, which show Sweet's advice to Johansen of problems with Johansen being in Alaska on July 6, 1951 in the absence of petitioner and demonstrate that Johansen remained absent from Seattle through July 19, 1951, by which time petitioner had returned to his office after being absent from approximately June 24, 1951. That an additional copy of a letter from Sweet to the Civil Aeronautics Administration, photo of which is submitted with the original hereof, is pertinent as reflecting the transmittal of the bill of sale from Johansen as received in the Keatinge files from Los Angeles on July 12, 1951, to place the plane in petitioner's name while petitioner still remained absent from the office. That the further pertinence

and relationship of the said telegrams and the transmittal is demonstrated herein as bearing directly upon the circumstances in which petitioner accepted a moral responsibility and deemed that he did not have a contract with Johansen.

That the foregoing records make pertinent records of certain proceedings in other cases in which Johansen was at that time involved, certified copies of which are hereto attached, which reflect that judgment taken against Johansen on July 2, 1951, praecipe for an order of sale on said judgment on July 10, 1951, sale of the plane set by the Sheriff for July 23, 1951, which was canceled on July 20, 1951, after petitioner on return to his office had determined to accept the moral responsibility and accordingly accepting sale of the plane, paid and discharged said judgment. That the Keatinge records and other records herein further make pertinent, together with the testimony of Mr. Sweet hereinafter analyzed, a satisfaction of judgment dated the 13th day of July, 1951, prepared in Eddleman's absence from his office but not filed until August of 1951, and that the same is directly pertinent to the testimony of Mr. Sweet and to the circumstances out of which petitioner conceived the moral obligation and the sale position to which he has adhered and support of which is necessary and vital to his vindication of his honor and integrity in the within proceedings which can only be achieved by providing to him a fair opportunity for a rehearing either before this Court or by referring the matter back to the Bar Association for further proceedings and hearing and finding.

That the telephone conversation with Beresford and the deposition of Beresford with the Keatinge files and records make pertinent a correction which Johansen made to a deposition he gave on May 20,

1958, a copy of which certified to by the presiding judge of the Superior Court of King County is attached hereto, which shows that prior to the institution of the suit of Johansen v. Eddleman Johansen did not know about fees received by petitioner from parties related to the Currey interests but did not discover that until the end of April, 1958, although he knew of petitioner's representation of those interests in 1952 and 1953 prior to the time that he had settled with Eddleman in 1954. That the relationship of this item and these facts and the bearing that they have upon the good faith of the suit instituted against Beresford in which Eddleman recovered the relief are detailed and covered elsewhere herein.

That there is further submitted herewith certified copy of Superior Court order of May 22, 1961, showing that Fred Paul without notice to petitioner withdrew plaintiff's exhibits herein which accordingly were not available to petitioner at the time of answering and which serve to explain petitioner's lack of knowledge with respect thereto at the disciplinary hearing.

That the foregoing records vital to the defense by petitioner, his honor and his integrity are now available and that he should be afforded the opportunity for a further hearing in which they may be considered and used as a basis for the facts on which a fair decision of the Court may be reached after a more thorough investigation. That the absence of these records becomes extremely more important in the light of the right of the petitioner to the due process of the law which would have been provided had he been afforded an earlier and prompt hearing while witnesses impartial in character remained alive. That the rules and procedures of the Bar Association

and the Court do not provide the opportunity to one accused of violation of ethics to himself bring on for hearing such a matter, and petitioner submits that he is accordingly deprived of the due process of law in the extreme and long delay in spite of the fact that as hereinafter reflected he openly invited Robert O. Beresford then a member of the Administrative Committee of the Washington State Bar Association and later a member of the Board of Governors thereof as well as his client, Anton R. Johansen, to take the matters to the Bar Association immediately when the claims were first voiced.